

ORDER NO. 3752

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Express Contract 31 (MC2016-61)
Negotiated Service Agreement

Docket No. CP2016-76

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL EXPRESS NEGOTIATED SERVICE AGREEMENT

(Issued January 17, 2017)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Amendment to Priority Mail Express Contract 31, with Portions Filed Under Seal, January 5, 2017 (Notice). The redacted version of the amendment is an attachment to the Notice of the United States Postal Service of Filing Errata to Notice of Amendment to Priority Mail Express Contract 31, January 10, 2017, Attachment A (Amendment).

In Order No. 2982, the Commission approved the Priority Mail Express Contract 31 negotiated service agreement (Existing Agreement).² On January 5, 2017, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On January 6, 2017, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not have a material effect on the ability of the contract to comply with 39 U.S.C. § 3633. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal with the Existing Agreement. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

² See Docket Nos. MC2016-61 and CP2016-76, Order Adding Priority Mail Express Contract 31 to the Competitive Product List, January 6, 2016 (Order No. 2982).

³ See Docket No. CP2016-76, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, January 6, 2017. A Chairman's Information Request was issued to reconcile an apparent discrepancy between the version of the Amendment attached to the Notice and the version filed under seal with the Commission. Chairman's Information Request No. 1, January 6, 2017. The Postal Service resolved this issue by correcting the public redacted version of the Amendment. Response of the United States Postal Service to Chairman's Information Request No. 1, January 10, 2017; see *also* Amendment.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express Negotiated Service Agreement, January 13, 2017 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the materials filed under seal in this docket, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment replaces sections I.E (concerning the volume commitment for each contract year), I.G (concerning contract prices), I.H (concerning the annual price adjustments), and section III (extending the contract term from three years to four years).

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). *See also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.H of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective on two days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire four years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁵

The Amendment also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.⁶ During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the Amendment. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

⁵ Amendment at 3. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

⁶ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) days of the contract expiring." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express Contract 31 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary